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11
12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 ARTHUR DOGSWELL, L.L.C., a
16 Delaware Limited Liability
17 Company,

18 Plaintiff,

19 v.

20 HIMALAYAN CORPORATION, a
21 Washington Corporation; HIMALAYAN HOLDINGS
22 GROUP, LLC, a Washington
23 Limited Liability Company; SUJAN
24 K. SHRESTHA, an individual; and
DOES 1-10,

Defendants.

Case No.: *CV13-7235 ODW-MRW*
COMPLAINT FOR:

- (1) TRADEMARK INFRINGEMENT IN VIOLATION OF THE LANHAM ACT, 15 U.S.C. § 1114;
- (2) UNFAIR COMPETITION IN VIOLATION OF THE LANHAM ACT, 15 U.S.C. § 1125(a);
- (3) UNFAIR COMPETITION UNDER CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200 et seq.; and,
- (4) COMMON LAW MISAPPROPRIATION.

DEMAND FOR JURY TRIAL

2013 SEP 30 PM 4:03
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT CALIF.
LOS ANGELES

FILED

1 Plaintiff, ARTHUR DOGSWELL, L.L.C, by and through its attorneys, for
 2 its complaint against HIMALAYAN CORPORATION and SUJAN K.
 3 SHRESTHA, hereby alleges as follows:

4

5 **THE PARTIES**

6 1. Plaintiff ARTHUR DOGSWELL, L.L.C., doing business as
 7 DOGSWELL (“DOGSWELL”), is and at all times pertinent to this action has
 8 been, a limited liability company duly organized and existing under the laws of the
 9 State of Delaware, and having its principal place of business at 1964 Westwood
 10 Blvd., Suite 350 Los Angeles, California 90025.

11 2. Upon information and belief, Defendant HIMALAYAN
 12 CORPORATION, doing business as HIMALAYAN DOG CHEW
 13 (“HIMALAYAN CORP”), is a corporation duly organized and existing under the
 14 laws of the State of Washington, with its principal place of business at 4480
 15 Chennault Beach Road, Mukilteo, Washington 98275.

16 3. Upon information and belief, Defendant HIMALAYAN HOLDINGS
 17 GROUP, LLC (“HIMALAYAN LLC”), is a limited liability company duly
 18 organized and existing under the laws of the State of Washington, with its principal
 19 place of business at 4480 Chennault Beach Road, Mukilteo, Washington 98275
 20 (collectively, HIMALAYAN CORP and HIMALAYAN LLC shall be referred to
 21 as “HIMALAYAN”).

22 4. Upon information and belief, Defendant SUJAN K. SHRESTHA
 23 (“SHRESTHA”) is an individual residing at 7205 58th Street NE, Marysville,
 24 Washington 98270-9285.

25 5. Upon information and belief Defendant DOES Nos. 1 through 10 (the
 26 “DOE DEFENDANTS”) are individuals, corporations and other legal entities —
 27 including online businesses and distributors — whose names and addresses and
 28

1 residences of which are presently unknown (collectively, HIMALAYAN,
 2 SHRESTHA and the DOE DEFENDANTS shall be referred to as the
 3 "DEFENDANTS").

4

5 **JURISDICTION AND VENUE**

6. This is a civil action arising under the laws of the United States
 7 relating to trademarks (15 U.S.C. Sections 1114(1), 1117 and 1125(a)). This Court
 8 has federal question jurisdiction pursuant to 28 U.S.C. Sections 1331, 1338(a) and
 9 (b) and 2201-02.

10. This Court has personal jurisdiction over HIMALAYAN pursuant to
 11 California Code of Civil Procedure Section 410.10. Plaintiff is informed and
 12 believes, and thereon alleges, that HIMALAYAN has engaged in business
 13 activities in California — including marketing and selling its infringing products at
 14 the recent 24th Annual America's Family Pet Expo event in Costa Mesa, California
 15 — and has substantial, continuous and systematic contacts with the State of
 16 California and within this Judicial District.

17. This Court has personal jurisdiction over SHRESTHA pursuant to
 18 California Code of Civil Procedure Section 410.10. Plaintiff is informed and
 19 believes, and thereon alleges, that SHRESTHA has engaged in business activities
 20 in California, and has substantial, continuous and systematic contacts with the
 21 State of California and within this Judicial District.

22. This Court has personal jurisdiction over the DOE DEFENDANTS
 23 pursuant to California Code of Civil Procedure Section 410.10. Plaintiff is
 24 informed and believes, and thereon alleges, that the DOE DEFENDANTS have
 25 engaged in business activities in California, and has substantial, continuous and
 26 systematic contacts with the State of California and within this Judicial District.

1 10. The acts and transactions complained of herein were conceived,
2 carried out, made effective, and had an effect within the State of California and
3 within this Judicial District. Venue is proper under 28 U.S.C. Sections 1338(a),
4 1391(b) and (c).

NATURE OF THE ACTION

7 11. In this action, DOGSWELL seeks injunctive relief, lost profits,
8 damages and attorney fees for DEFENDANTS' acts of trademark infringement
9 under 15 U.S.C. § 1114 *et seq.*, unfair competition and false designation of origin
10 under 15 U.S.C. § 1125(a), unfair competition under Cal. Bus. & Prof. Code
11 § 17200 *et seq.*, and common law misappropriation.

GENERAL ALLEGATIONS

For More Than Nine (9) Years, Dogswell Has Sold And Marketed
VITALITY® Consumable Pet Products in United States Commerce.

15 12. For more than Nine (9) Years, Dogswell has sold and marketed
16 VITALITY® consumable pet products in United States commerce.

17 13. Since at least as early as July 6, 2004, Dogswell first used its
18 VITALITY® trademark in United States commerce to sell its unique and now
19 well-known line of VITALITY® dog treats, a sample of which is depicted below.



1 14. Since at least as early as April 24, 2008, Dogswell first used its
 2 VITALITY® trademark in United States commerce to sell its unique and now
 3 well-known line of VITALITY® dog food.

4 15. Dogswell previously expanded and continues to expand its
 5 VITALITY® healthy, consumable product lines in the United States and elsewhere
 6 to include additional dog treats, and other forms of dog food, including
 7 VITALITY® JERKY BARS™, VITALITY® JERKY STRIPS™, and dry and
 8 canned pet food, including a variety of chicken, duck, beef, and lamb offerings.

9 16. Dogswell distributes its VITALITY® dog treat and dog food product
 10 lines in over 5,000 retail locations throughout the United States. For instance,

- 11 a. On or about November 11, 2005, Dogswell first distributed its
 12 VITALITY® dog treats in Whole Foods Market, Inc. (“Whole Foods”);
- 13 b. On or about December 27, 2006, Dogswell first distributed its
 14 VITALITY® dog treats in Target Corporation (“Target”); and,
- 15 c. On or about July 23, 2007, Dogswell first distributed its
 16 VITALITY® dog treats in PETCO Animal Supplies, Inc. (“PETCO”).

17 **The Consumable Pet Products Industry Identifies VITALITY® As**
 18 **A Pet Product That Is Marketed And Sold By Dogswell.**

19 17. The consumable pet products industry identifies VITALITY® as a pet
 20 product that is marketed and sold by Dogswell, as demonstrated by VITALITY®
 21 television features and news articles, most recently as follows,

- 22 a. On or about September 6, 2012, the pet industry news blog My
 23 Bella Pup featured JERKY BARS. In this article, the writer states,

24 “Sooooo! One of the products Dogswell sent over to me is called
 25 Vitality Jerky Bars. They’re basically a supplement/vitamin for
 26 dogs – genius. Seems like it tastes good. . . . Bella was whining for
 27 more after I gave her a piece yesterday. . . . Since I gave her a
 28 piece already today, the bag remained shut and now she’s asleep
 next to it. . . .”;

1 b. On or about April 4, 2013, the Hallmark Channel, as part of its
 2 television show, *Home & Family*, featured VITALITY® dog treats in a
 3 segment hosted by the Hallmark Channel's Sophie Uliano concerning the
 4 Natural Products Expo; and,

5 c. On or about May 1, 2013, the pet industry news periodical
 6 Pet Product News International featured a news story concerning
 7 Dogswell product offerings, including VITALITY®, entitled "*Dogswell*
 8 *Redesign Ends Well*". The article states,

9 "‘In redesigning Vitality, Dogswell elevated the ‘Grain Free’ and
 10 ‘Made in the USA’ call-outs, greatly enlarged the ‘Jerky Bars’
 11 name and broke down the ingredients in hard-to-miss graphics
 12 along the left side.”

13 **The Relevant Consuming Public Has Identified And Continues To Identify**
 14 **VITALITY® As A Consumable Pet Treat Marketed And Sold By Dogswell.**

15 18. The relevant consuming public has identified and continues to identify
 16 VITALITY® as a consumable pet treat marketed and sold by Dogswell, as
 17 demonstrated through, *inter alia*:

18 a. Advertisements and Testimonials: print and commercial
 19 advertisements; customer testimonials; trade shows where VITALITY®
 20 consumable pet treats were exhibited and sold; point-of-purchase retail
 21 displays, which further increase consumer awareness concerning the availability
 22 of VITALITY® consumable pet treats; and,

23 b. Retail Advertisements: PETCO's marketing and sale of
 24 VITALITY® consumable pet treats in at least 1,200 retail locations, as well as
 25 online through www.PETCO.com, which previously has resulted in: several
 26 million commercial impressions or individual page views of the VITALITY®
 27 pages on the PETCO Internet website; several hundred thousand commercial
 28 impressions of VITALITY® as a result of PETCO's mailing of a circular, or

1 paper flyer, to its customers featuring VITALITY®; and, thousands of customer
 2 commercial impressions inside PETCO retail locations.

3 **Dogswell Has Invested And Continues to Invest Substantial Time, Money**
 4 **And Effort In Promoting And Advertising VITALITY®**
 5 **Consumable Pet Products.**

6 19. Dogswell has invested and continues to invest substantial time, money
 7 and effort in promoting and advertising VITALITY® consumable pet products,
 8 and has sold over 1,000,000 (1 million) separate SKUs of VITALITY®
 9 consumable pet treats in the last two (2) years alone.

10 **Dogswell Holds A Federal Registration For VITALITY®,**
 11 **United States Trademark Registration No. 3,987,619.**

12 20. DOGSWELL holds a Federal registration for VITALITY®, United
 13 States Trademark Registration No. 3,987,619, in International Classification 31 for
 14 “dog food; dog treats.” A copy of DOGSWELL’s United States trademark
 15 registration for VITALITY® is attached hereto as **Ex. A.**

16 **Defendants Have Willfully Violated Dogswell’s Rights In And**
 17 **To VITALITY®, United States Trademark Registration No. 3,987,619.**

18 21. Upon information and belief, on or about September 15, 2012, which
 19 is over eight (8) years after Dogswell first used its VITALITY® trademark for the
 20 marketing and sale of its VITALITY® dog treats and dog food in the United
 21 States, DEFENDANTS began using “Vitality” to market and sell their consumable
 22 pet products in the United States.

23 22. Upon information and belief, at least as early as April 21, 2013,
 24 Defendants have marketed and/or shipped “Vitality” consumable pet products into
 25 California and this Judicial District, including as follows,

26 a. as part of recent 24th Annual America’s Family Pet Expo event
 27 in Costa Mesa, California;

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b. through several internet websites including, but not limited to, www.BestBullySticks.com, www.BuyHimalayanDogChews.com, and www.HimalayanDogChews.com. The www.BuyHimalayanDogChews.com retail website offers DEFENDANTS’ “Vitality” consumable pet products for sale at \$5.30 per package, with “5-day shipping” into California; and,

c. at several retail locations within this judicial district, including at Centinela, located at 1505 Olive Avenue, Burbank, California 91506; Doggy Woods Pet Emporium, located at 923 N. Hollywood Way, Burbank, California 91505; Pet Haven, located at 626 N. Glenoaks Blvd., Burbank, California 91502; and well as several other retailers within this judicial district.

23. In addition, upon information and belief, while Himalayan has filed United States Federal trademark applications for YAKY YAM, US TM App. No. 85/284,135, and, LOTS OF PAWS, US TM App. No. 85/891,989, it did not file a Federal trademark application for “Vitality” — this is because it likely knew that such an application would not proceed to registration.

24. DOGSWELL is informed and believes, and on that ground alleges, that DEFENDANTS adopted the confusingly similar term “Vitality” with knowledge of DOGSWELL’s Federally registered VITALITY® trademark, and with the intent to deceive consumers and to cause confusion among purchasers for the purpose of misappropriating and benefiting from the goodwill and public recognition associated with DOGSWELL’s Federally registered VITALITY® trademark and by diverting sales from Dogswell to DEFENDANTS.

25. DOGSWELL is informed and believes, and on that ground alleges, that the term “Vitality” is identical to DOGSWELL’s Federally registered VITALITY® trademark in sight, sound and connotation, such that DEFENDANTS’ its use of “Vitality” in the sale and marketing of consumable pet

1 treats to the same class of customers, through the same or similar channels of trade,
2 is likely to cause confusion.

3 26. The aforementioned acts of DEFENDANTS have caused, and will
4 cause, actual confusion and a likelihood of confusion in the minds of the trade and
5 the public, and have damaged and will further damage DOGSWELL's well-earned
6 and carefully crafted reputation for exclusivity in connection with its Federally
7 registered VITALITY® trademark.

8 27. On May 14, 2013, DOGSWELL initiated contact with
9 DEFENDANTS concerning this matter.

10 28. Upon information and belief, on or about May 28, 2013,
11 DEFENDANTS caused the Internet domain name
12 www.BuyHimalayanDogChews.com to be transferred to Avrum Elmakis, who has
13 an address of 1221 Admiral Street, Richmond, Virginia 23220. Upon information
14 and belief, Mr. Elmakis is the proprietor of Buy Himalayan Dog Chews.

15 || 29. The parties have been unable to resolve this matter.

COUNT II

INFRINGEMENT OF FEDERALLY REGISTERED TRADEMARK
(LANHAM ACT §32)

19 30. DOGSWELL repeats and re-alleges each and every allegation
20 contained in paragraphs 1 through 28 hereof as if fully stated herein.

31. By virtue of their conduct, DEFENDANTS have used and are using a
spurious term in connection with the advertising, marketing, and offering of their
“Vitality” consumable pet products in interstate commerce, which mark is
identified with the Federally registered VITALITY® trademark presently used by
DOGSWELL.

32. DOGSWELL's VITALITY® consumable pet products are offered
27 and advertised to the nearly identical or identical classes of purchasers as

1 DEFENDANTS' "Vitality" pet treats. As a result of DEFENDANTS' conduct,
 2 there is a strong likelihood of confusion, mistake, or deception, and many persons
 3 familiar with DOGSWELL's Federally registered VITALITY® trademark, its
 4 reputation and favorable goodwill, are likely to purchase DEFENDANTS'
 5 "Vitality" consumable pet products in the mistaken belief that they are offered or
 6 authorized by DOGSWELL.

7 33. DEFENDANTS' actions have been and are willful, unfair, false and
 8 deceptive, in that they tend to mislead, deceive and confuse, and have had and will
 9 have the result of misleading, deceiving and confusing the public to believe that
 10 DEFENDANTS and/or their "Vitality" consumable pet products are affiliated
 11 with, sponsored or controlled by DOGSWELL.

12 34. As a consequence, DEFENDANTS have traded and are trading upon,
 13 and have gained and are gaining public acceptance and other benefits from,
 14 DOGSWELL'S favorable reputation and valuable goodwill, which have
 15 accordingly been placed at risk and damaged by DEFENDANTS' tortious actions
 16 and conduct.

17 35. The foregoing actions of DEFENDANTS constitute trademark
 18 infringement by inducing the erroneous belief that DEFENDANTS and/or their
 19 "Vitality" consumable pet products are in some manner affiliated with, originate
 20 from, or are sponsored by DOGSWELL in violation of Section 32 of the Lanham
 21 Act, 15 U.S.C. §1114.

22 36. DOGSWELL is informed and believes, and on that ground alleges,
 23 that DEFENDANTS have made and/or will make unlawful gains and profits from
 24 their unlawful actions as alleged herein, and by reason thereof, DOGSWELL has
 25 been deprived of gains and profits which otherwise would have inured to it but for
 26 such unlawful actions.

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37. DOGSWELL has no adequate remedy at law for the injuries alleged in this Count. The injury is, in part, intangible in nature and not capable of being fully measured or valued in terms of money damages. Further, the injury is of a continuing nature and will continue to be suffered so long as DEFENDANTS continue their wrongful conduct.

38. Notwithstanding the inadequacy of, and the difficulty of presently fully ascertaining the value of the damage to DOGSWELL caused by DEFENDANTS' wrongful conduct, said conduct has resulted in irreparable, direct and proximate damages to DOGSWELL and DOGSWELL is entitled to injunctive relief under 15 U.S.C. Section 1116(a).

COUNT II

FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION
(LANHAM ACT §43(a))

39. DOGSWELL repeats and re-alleges each and every allegation contained in paragraphs 1 through 37 hereof as if fully stated herein.

40. This claim arises under Section 43(a) of the Lanham Act. DEFENDANTS' unauthorized use and actual, continued use in interstate commerce of DOGSWELL's Federally registered VITALITY® trademark constitutes use of a false designation of origin and a false description or representation that has caused and is likely to cause confusion, mistake or deception (a) as to the characteristics, qualities or origin of DEFENDANTS' "Vitality" consumable pet products, (b) as to an affiliation, connection or association between DOGSWELL and DEFENDANTS, and (c) as to the sponsorship or approval of DEFENDANTS' "Vitality" consumable pet products.

41. Such actions, as used in commercial advertising, have misrepresented and do misrepresent the nature, characteristics or qualities of DEFENDANTS' "Vitality" consumable pet products and/or commercial activities.

1 42. Upon information and belief, DEFENDANTS have intentionally
2 falsely designated the origin of their “Vitality” consumable pet products by
3 adopting and using a term that is identical as DOGSWELL’S Federally registered
4 VITALITY® trademark for its consumable pet products so as to profit from
5 DOGSWELL’S well-earned and carefully crafted reputation by confusing the
6 public as to the source, origin, sponsorship or approval of its VITALITY®
7 consumable pet products, with the intention of deceiving and misleading the public
8 at large, and of wrongfully trading on the goodwill and reputation of DOGSWELL.

9 43. The activities of DEFENDANTS complained of herein have caused
10 and, unless enjoined, will continue to cause substantial and irreparable harm to
11 DOGSWELL, its well-earned and carefully crafted business reputation and its
12 goodwill, for which DOGSWELL is without adequate remedy at law. Such
13 activities have also caused DOGSWELL monetary loss and damage including, but
14 not limited to, the loss of profits in an amount not yet determined.

15 44. Further, the injury is of a continuing nature and will continue to be
16 suffered so long as DEFENDANTS continue their wrongful conduct.
17 Notwithstanding the inadequacy of, and the difficulty of presently fully
18 ascertaining, the value of the damage to DOGSWELL caused by DEFENDANTS'
19 wrongful conduct, DOGSWELL is informed and believes, and on that ground
20 alleges, that said conduct has resulted in irreparable, direct and proximate damages
21 to DOGSWELL.

COUNT III

UNFAIR COMPETITION UNDER CALIFORNIA
BUSINESS & PROFESSIONS CODE §§ 17200 *et seq.*

25 45. DOGSWELL repeats and re-alleges each and every allegation
26 contained in paragraphs 1 through 43 hereof as if fully stated herein.

1 46. DOGSWELL is informed and believes, and on that ground alleges,
 2 that DEFENDANTS misappropriated DOGSWELL's Federally registered
 3 VITALITY® trademark with the intent of causing confusion, mistake and
 4 deception as to the source of their consumable pet products with the intent to palm-
 5 off their "Vitality" consumable pet products as those of DOGSWELL, and as such
 6 DEFENDANTS have committed unfair competition in violation of the common
 7 law of the State of California.

8 47. The foregoing acts of DEFENDANTS have caused and will continue
 9 to cause injury to DOGSWELL, by depriving it of sales of its genuine
 10 VITALITY® consumable pet products, injuring its business reputation, and by
 11 passing off DEFENDANTS' consumable pet products as DOGSWELL's genuine
 12 consumable pet products, all in violation of the common law of the State of
 13 California.

14 48. DEFENDANTS' acts have caused and will continue to cause
 15 irreparable harm and damage to DOGSWELL, and have caused and will continue
 16 to cause DOGSWELL monetary damage in an amount thus far not determined, for
 17 which DOGSWELL is entitled to its actual damages, DEFENDANTS' profits,
 18 punitive damages, attorney fees and costs.

19 49. DEFENDANTS' infringement of DOGSWELL's Federally registered
 20 VITALITY® trademark constitutes "unlawful, unfair or fraudulent business act[s]"
 21 or practice[s] and unfair, deceptive, untrue or misleading advertising" within the
 22 meaning of California Business & Professions Code § 17200.

23 50. As a consequence of DEFENDANTS' actions, DOGSWELL is
 24 entitled to injunctive relief and an order that DEFENDANTS disgorge all profits
 25 on the manufacture, use, display or sale of infringing goods.

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COUNT IV

COMMON LAW MISAPPROPRIATION

51. DOGSWELL repeats and re-alleges each and every allegation contained in Paragraphs 1 through 49 hereof as if fully stated herein.

52. DOGSWELL has invested substantial time, man-hours, resources and money in adopting, developing and using its Federally registered VITALITY® trademark (“Investment Capital”), and the Federally registered VITALITY® trademark is DOGSWELL’s property.

53. In committing the acts of trademark infringement and unfair competition as alleged herein, DEFENDANTS have misappropriated and taken without permission DOGSWELL'S property and converted it to their own use for their own benefit.

54. DOGSWELL is informed and believes, and on that ground alleges, that by misappropriating and converting DOGSWELL'S property, DEFENDANTS have benefited greatly and illegitimately by using "Vitality" to offer their consumable pet products for sale without having to make a substantial investment of their own Investment Capital.

55. DEFENDANTS' acts constitute common-law misappropriation under the common law of the State of California.

56. DEFENDANTS have been and will continue to be, unless enjoined, unjustly enriched by their acts of misappropriation.

57. The foregoing acts of DEFENDANTS have injured and will continue to injure DOGSWELL by depriving it of sales of its genuine VITALITY® consumable pet products and by injuring its business reputation and good will, all in violation of the common law of the State of California.

58. DEFENDANTS' acts have caused and will continue to cause irreparable harm and damage to DOGSWELL, and have caused and will continue

1 to cause DOGSWELL monetary damage in an amount thus far not determined, for
 2 which DOGSWELL is entitled to its actual damages, DEFENDANTS' profits,
 3 punitive damages, attorney fees and costs.

4 59. DOGSWELL has no adequate remedy at law.
 5

6 **WHEREFORE**, DOGSWELL demands judgment against DEFENDANTS
 7 as follows:

8 A. That DEFENDANTS' conduct infringes DOGSWELL's Federally
 9 registered VITALITY® trademark, falsely designates the origin of DOGSWELL's
 10 VITALITY® consumable pet products, falsely describes such VITALITY®
 11 consumable pet products, and unfairly competes with DOGSWELL, all in
 12 violation of Lanham Act §§43(a) and 32, 15 U.S.C. §1125, and 15 U.S.C. §1114 et
 13 seq.

14 B. That DEFENDANTS' conduct serves to infringe DOGSWELL's
 15 Federally registered VITALITY® trademark and unfairly competes with
 16 DOGSWELL under the common law of the State of California.

17 C. That DEFENDANTS and their agents, officers, directors, servants,
 18 employees, attorneys, their successors and assigns, and all others in active concert
 19 or participation with DEFENDANTS be preliminarily and permanently enjoined
 20 from directly or indirectly:

21 i. Using DOGSWELL's Federally registered VITALITY®
 22 trademark, or any other trademarks which are confusingly similar to or colorable
 23 imitations of DOGSWELL's Federally registered VITALITY® trademark,
 24 including, without limitation, the term "Vitality" alone or as part of or together
 25 with any other designs, word or words, trademark, service mark, trade name, trade
 26 dress or other business or commercial designation or any logo, symbol or design;

1 ii. Committing any act which, in and of itself, or from the manner
2 or under the circumstances in which it is done amounts to false designation of
3 origin, false description or false representation of DEFENDANTS' consumable pet
4 products; and,

5 iii. Otherwise unfairly competing with DOGSWELL or
6 misappropriating DOGSWELL's intellectual property, including, but not limited to
7 DOGSWELL's Federally registered VITALITY® trademark.

8 D. That the Court issue an Order directing DEFENDANTS to file with
9 the Court and serve on DOGSWELL, within thirty (30) days after the service on
10 DEFENDANTS of such injunctions, a report in writing and under oath, setting
11 forth in detail the manner and form in which DEFENDANTS have complied with
12 the injunction.

13 E. That the Court award judgment in favor of DOGSWELL for the
14 amount of either damages sustained by DOGSWELL or the profits made by
15 DEFENDANTS as a result of DEFENDANTS' wrongful conduct, whichever
16 amount is greater, and damages in an amount necessary for DOGSWELL to
17 conduct corrective advertising to eliminate the confusion caused by
18 DEFENDANTS' wrongful acts.

19 F. That the Court award judgment in favor of DOGSWELL in the
20 amount of treble damages under 15 U.S.C. §1117, plus prejudgment interest.

21 G. That the Court award judgment against DEFENDANTS for the full
22 costs of this action, including reasonable attorney fees.

23 H. That the Court award to DOGSWELL punitive damages sufficient to
24 deter DEFENDANTS from committing such willful acts of infringement in the
25 future.

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1 I. For interest on all amounts found to be due to DOGSWELL from
2 DEFENDANTS, at the prevailing rate, from the date said amounts or any part
3 thereof became or become due.

4 J. That the Court require DEFENDANTS to notify their parents,
5 subsidiaries, affiliated companies, commercial associates, dealers, dealer
6 advertising associations, advertising agencies, suppliers and customers of said
7 Order.

8 K. That the Court order such other, further and different relief as the
9 nature of this action may require and that the Court deem just and proper.

10 L. That the Court retain jurisdiction of this action for the purpose of
11 enabling DOGSWELL to apply to the Court, at any time, for such further orders
12 and directions as may be necessary or appropriate for the interpretation or
13 execution of any order entered in this action, for the modification of any such
14 order, for the enforcement or compliance therewith and for the punishment of any
15 violations thereof.

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Respectfully submitted,

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DATED: September 30, 2013

STRADLING YOCCA CARLSON
& RAUTH, P.C.

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By:

Thomas J. Speiss, III, Esq.
Attorneys For Plaintiffs

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JURY DEMAND

DOGSWELL hereby demands a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure on each and every cause of action asserted in its Complaint that is triable by jury.

DATED: September 30, 2013

Respectfully submitted,

STRADLING YOCCA CARLSON
& RAUTH, P.C.

T \downarrow $\mathcal{P}_{\text{percolation}}$

By: _____
Thomas J. Speiss, III, Esq.
Attorneys For Plaintiffs

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 Arthur Dogswell, L.L.C.

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

ARTHUR DOGSWELL, L.L.C., a Delaware Limited
 Liability Company,

PLAINTIFF(S)

v.

HIMALAYAN CORPORATION, a Washington
 Corporation; HIMALAYAN HOLDINGS GROUP,
 LLC, a Washington Limited Liability Company;
 SUJAN K. SHRESTHA, an individual; and DOES 1-
 10,

DEFENDANT(S).

CASE NUMBER

CV13-7235 ODW-MRW

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, THOMAS J. SPEISS, III, whose address is 100 Wilshire Blvd., Suite 400 Santa Monica, CA 90401. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

SEP 30 2013

Dated: _____

Clerk, U.S. District Court

By: _____



(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3).]



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Otis D. Wright II and the assigned Magistrate Judge is Michael R. Wilner.

The case number on all documents filed with the Court should read as follows:

2:13-cv-07235 ODW-MRWx

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

September 30, 2013

Date

By SBOURGEOIS
Deputy Clerk

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701

Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.